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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,599	01/13/2006	Marie-Christine Secretin	3712036.00702	1833

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K&L Gates LLP
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EXAMINER	
BEKKER, KELLY JO	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
12/04/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No.	Applicant(s)	
	10/564,599	SECRETIN, MARIE-CHRISTINE	
	Examiner	Art Unit	
	KELLY BEKKER	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-35* is/are pending in the application.

4a) Of the above claim(s) *15-21* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14 and 22-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/6/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-14 and 22-25 in the reply filed on September 28, 2009 is acknowledged. The traversal is on the ground(s) that (1) the inventions are related to one single inventive concept as the reference cited in the restriction, Fushs WO 02/15719 A2 does not teach that the protein content is no more than 2g/100kcal and (2) that the prior art does not teach synergy between a protein source and probiotic. This is not found persuasive because the groups are not related to a single inventive concept. As stated in the previous office action, the inventions do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the single general concept linking the groups is a composition comprising proteins, lipids, carbohydrates, and a probiotic, wherein at least 40% of the proteins are modified sweet whey proteins comprising no CGMP. The single general concept linking the groups is not a special technical feature as it is not an inventive concept; Fuchs et al (WO 02/15719) teaches of a nutritional composition comprising proteins, lipids, carbohydrates, and a probiotic, wherein at least 50%, including 100%, of the protein is a modified sweet whey protein and is not other suitable protein, including CGMP (Abstract, page 6 lines 7-10 and page 7 lines 11-27). Specifically regarding applicant's newly added limitation and argument that the prior art does not teach no more than 2g protein/100kcal, Fushs teaches that the protein provides for about 8% total calories in the composition (abstract); and thus teaches of a composition containing a protein content of 2g/100 kcal which encompasses the instantly claimed limitations (as protein was about 4 calories per gram and Fuchs teaches about 8% of the calories are protein, the protein would contain about 2 g protein). Additionally, the corresponding technical feature is not inventive, as shown below over Kuslys et al (WO 01/22837) in view of Van Hoey-De-Boer et al (EP 0904784 A1) and/or Kratky et al (EP 01048226 A1) in view of Van Hoey-De-Boer et al (EP 0904784 A1).

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "low amount of electrolytes" in claim 14 is a relative term which renders the claim indefinite. The term "low amount of electrolytes" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to what amount of electrolytes is considered to be a "low amount" as instantly claimed. For example, it is unclear if a low amount is less than 100mg/100mL, or if a low amount is less 50mg/100mL, or if the low amount is based on some other number or measurement.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5, 6, 8, 10-14, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslys et al (WO 01/22837) in view of Van Hoey-De-Boer et al (EP 0904784 A1).

Kuslys et al (Kuslys) teaches of an infant formula (page 2 lines 15-16) comprising a source of lipids comprising fish oil (page 6 lines 14-23) which includes the Long Chain Unsaturated Fatty Acid (LC-USFA) docosahexaenoic acid (DHA), a source of carbohydrates (page 6 lines 6-13), a source of sweet whey protein from which the

casino-glyco-macropeptide (CGMP) has been removed (page 2 lines 35 and 36) wherein the protein is at about 1.8g/100kcal (page 3 lines 5-9), other beneficial substances (page 7 lines 28-29), water, and salts which when combined with water formed electrolytes, including sodium, calcium, magnesium, chloride, and potassium (page 7 lines 12-22 and page 8 lines 1-2). Kuslys teaches that the ratio of whey protein to casein is from 60-70% whey to 30-40% casein, thus teaching that the protein encompasses 60-70% whey protein (page 3 lines 27-32). Page 9 lines 21-25, Kuslys teaches that the whey protein comprises about 33-86% of the total protein (6% whey protein/(6% whey protein +10% non-fat milk solids + 2% alpha lactalbumin rich whey protein source); 50% whey protein/(50% whey protein +8% non-fat milk solids + 0% alpha lactalbumin rich whey protein source)). As hydrolysis is the process of breaking down a molecule and Kuslys teaches that the proteins are not hydrolyzed or treated by any other break down process, one of ordinary skill in the art would expect that the non hydrolyzed proteins as taught by Kuslys are intact as recited in claim 8. Kuslys teaches that the proteins are hydrolysed. Refer specifically to page 3 lines 21-22. Regarding the formula as having a low amount of electrolytes as recited in claim 14, as discussed above the term is unclear, however as Kuslys teaches that the amount of vitamins and thus electrolytes varies depending on the infant population (page 7 lines 12-22) it is believed that the teachings of Kuslys encompass and/or make obvious the instant limitation.

Kuslys is silent to the formula as containing a probiotic as recited in claim 1, wherein the probiotic is Bifidobaceria as recited in claims 3 and 6, and/or wherein the probiotic is Lactobacillus as recited in claims 3 and 6, preferably Lactobacillus paracasei rhamnosus GG as recited in claim 5.

Van Hoey-De-Boer et al (Hoey) teaches that an infant formula with health promoting action is formed with probiotics Bifidobacterium including Bifidobacterium Longum (B. longum) and a Lactobacillus strain including Lactobacillus rhamnosus GG (Lactobacillus paracasei rhamnosus GG) (abstract and paragraphs 0004, 0005, 0014, and 0018). Hoey teaches that the preparation aids to the prevention and treatment of disorders of the gastrointestinal tract (paragraph 0001).

Regarding the formula as containing a probiotic as recited in claim 1, wherein the probiotic is Bifidobaceria as recited in claims 3 and 6, and/or wherein the probiotic is Lactobacillus as recited in claims 3 and 6, preferably Lactobacillus paracasei rhamnosus GG, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the probiotics Bifidobaceria and Lactobacillus paracasei rhamnosus GG in the composition of Kuslys in view of Hoey in order to form an infant formula which aids to the prevention and treatment of disorders of the gastrointestinal tract as taught by Hoey, thus promoting better infantile health.

Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslys et al (WO 01/22837) in view of Van Hoey-De-Boer et al (EP 0904784 A1), further in view of the combination of Holm, Finn (Gut Health November 2001 pages 1-28) and Ishibashi et al (Bifidobacteria: their significance in human intestinal health Mal J Nutr 3, pages 149-159, 1997).

Kuslys in view of Hoey teaches of an infant formula comprising probiotic Bifidobacterium longum and Lactobacillus paracasei rhamnosus GG, as discussed above.

Kuslys is silent to the bifodobacteria longum as the BB536 strain as recited in claims 4 and 7.

Holm teaches probiotic foods improve the gut microbiota and through this human health (page 4). Holm teaches that there are a limited number of commercially available probiotics, including Lactobacillus paracasei rhamnosus GG (L. Rhamnosus GG) and Bifidobacterium Longum consisting of BB 536 (B. Longum BB 536) and SBT-2928 (page 14). Holm teaches that the knowledge of health benefits of probiotics is increasing rapidly and that (L. Rhamnosus) was known to assist in the modulation of the immune system and B. longum was known to have anti tumor properties (pages 15-16).

Ishibashi et el (Ishibashi) teaches that the number of bifidobacteria in bottle fed infants is lower than that in breast fed infants (page 150). Ishibashi teaches that infants administered B. longum BB536 has enhanced early colonization of bifidobacteria and

formation of bifidobacteria flora, accompanied by reduction of nectrotizing enterocolitis and other intestinal tract infections (page 153).

Regarding the bifodobacteria longum as the BB536 strain, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the B. longum as taught by Kuslys in view of Hoey to be either BB536 or SBT-2928 as the strands of probiotics which are commercially available for foods is limited and that is the selection for B. longum as taught by Holms. One would have been further motivated for the B. longum to be BB536 in order to form a product which would enhance the early colonization of bifidobacteria and formation of bifidobacteria flora in the infant and promote a reduction of nectrotizing enterocolitis and other intestinal tract infections as taught by Ishibashi.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslys et al (WO 01/22837) in view of Van Hoey-De-Boer et al (EP 0904784 A1), further in view of Kratky et al (EP 01048226 A1).

Kuslys teaches of an infant formula comprising a source of sweet whey protein wherein the proteins are not hydrolyzed or are hydrolysed, as discussed above.

Kuslys is silent to the protein as partially hydrolysed as recited in claim 9.

Kratky et al (Kratky) teaches of an infant formula (abstract) comprising a source of lipids comprising fish oil (paragraph 0024), a source of carbohydrates (paragraph 0023), and a source of sweet whey protein from which the casino-glyco-macropeptide (CGMP) has been removed (paragraph 0017) wherein the protein is less than 2g/100kcal, including at about 1.8g/100kcal (paragraph 0028). Kratky teaches that the protein fraction can be hydrolyzed or partially hydrolysised, i.e. less hydrolyzed, in order to prevent allergic reactions in infants and make the protein easier to digest (paragraph 0018).

Regarding the protein as partially hydrolyzed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to at least partially hydrolyze the protein of the infant formula of Kuslys in order for the protein to be more allergenic friendly and easier to digest as taught by Kratky.

Claims 1-3, 5, 6, 9-14, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kratky et al (EP 01048226 A1) in view of Van Hoey-De-Boer et al (EP 0904784 A1).

Kratky et al (Kratky) teaches of an infant formula (abstract) comprising a source of lipids comprising fish oil (paragraph 0024) which includes the Long Chain Unsaturated Fatty Acid (LC-USFA) docosahexaenoic acid (DHA), a source of carbohydrates (paragraph 0023), a source of sweet whey protein from which the casino-glyco-macropeptide (CGMP) has been removed (paragraph 0017) wherein the protein is less than 2g/100kcal, including at about 1.8g/100kcal (paragraph 0028), other beneficial substances so that it contains adequate nutrients to sustain healthy human life (paragraphs 0027 and 0032), water, and salts which when combined with water formed electrolytes, including sodium, calcium, magnesium, chloride, and potassium (paragraphs 0030 and 0032). Kratky teaches that the protein comprises about 97-98.5% whey protein (paragraph 0009). Kratky teaches that the protein can be less hydrolyzed, thus teaching that the protein is partially hydrolyzed (paragraph 0018). Regarding the formula as having a low amount of electrolytes as recited in claim 14, as discussed above the term is unclear, however as Kratky teaches that the amount of vitamins and thus electrolytes varies depending on the infant population (paragraph 0030) it is believed that the teachings of Kratky encompass and/or make obvious the instant limitation.

Kratky is silent to the formula as containing a probiotic as recited in claim 1, wherein the probiotic is Bifidobaceria as recited in claims 3 and 6, and/or wherein the probiotic is Lactobacillus as recited in claims 3 and 6, preferably Lactobacillus paracasei rhamnosus GG as recited in claim 5, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the probiotics Bifidobaceria and Lactobacillus paracasei rhamnosus GG in the composition of Kratky in view of Hoey in order to form an infant formula which aids to the prevention and treatment of disorders of the gastrointestinal tract as taught by Hoey, thus promoting better infantile health.

Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kratky et al (EP 01048226 A1) in view of Van Hoey-De-Boer et al (EP 0904784 A1), further in view of the combination of Holm, Finn (Gut Health November 2001 pages 1-28) and Ishibashi et al (Bifidobacteria: their significance in human intestinal health Mal J Nutr 3, pages 149-159, 1997).

Kratky in view of Hoey teaches of an infant formula comprising probiotic Bifidobacterium longum and Lactobacillus paracasei rhamnosus GG, as discussed above.

Kratky is silent to the bifodobacteria longum as the BB536 strain as recited in claims 4 and 7.

Holm teaches probiotic foods improve the gut microbiota and through this human health (page 4). Holm teaches that there are a limited number of commercially available probiotics, including Lactobacillus paracasei rhamnosus GG (L. Rhamnosus GG) and Bifidobacterium Longum consisting of BB 536 (B. Longum BB 536) and SBT-2928 (page 14). Holm teaches that the knowledge of health benefits of probiotics is increasing rapidly and that (L. Rhamnosus) was known to assist in the modulation of the immune system and B. longum was known to have anti tumor properties (pages 15-16).

Ishibashi et el (Ishibashi) teaches that the number of bifidobacteria in bottle fed infants is lower than that in breast fed infants (page 150). Ishibashi teaches that infants administered B. longum BB536 has enhanced early colonization of bifidobacteria and formation of bifidobacteria flora, accompanied by reduction of nectrotizing enterocolitis and other intestinal tract infections (page 153).

Regarding the bifodobacteria longum as the BB536 strain, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the B. longum as taught by Kratky in view of Hoey to be either BB536 or SBT-2928 as the strands of probiotics which are commercially available for foods is limited and that is the selection for B. longum as taught by Holms. One would have been further motivated for the B. longum to be BB536 in order to form a product which would enhance the early colonization of bifidobacteria and formation of bifidobacteria flora in the infant and

promote a reduction of nectrotizing enterocolitis and other intestinal tract infections as taught by Ishibashi.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7, 10-13, and 22-25 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6-13, 20 of copending Application No. 10/564,805 ('805) as amended March 2, 2009. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of '805 encompass the instantly claimed invention, including claiming an infant or follow on formula comprising a source of carbohydrates, a source of lipids, including a LC-PUFA comprising DHA, probiotics including Lactobcaillus paracasei rhamnosus GG and Bifidobacterium longum BB 536, and at least 40%, preferably at least 60% of the proteins as modified sweet whey proteins with no or reduced CGMP, wherein the protein is present in a maximum proportion of 2g/100kcal, preferably 1.8-1.85g/100kcal.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 8 and 14 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6-13, 20 of copending Application No. 10/564,805 ('805) as amended March 2, 2009, further in view of Kuslys et al (WO 01/22837). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of '805 encompass the instantly claimed invention as discussed above. The only difference is '805 does not claim the protein as intact as recited in claim 8, or the formula as having a low amount of electrolytes as recited in claim 14.

Kuslys teaches of an infant formula (page 2 lines 15-16) comprising a source of lipids comprising fish oil (page 6 lines 14-23), a source of carbohydrates (page 6 lines 6-13), a source of sweet whey protein from which the casino-glyco-macropeptide (CGMP) has been removed (page 2 lines 35 and 36) wherein the protein is at about 1.8g/100kcal (page 3 lines 5-9), other beneficial substances (page 7 lines 28-29), water, and salts which when combined with water formed electrolytes, including sodium, calcium, magnesium, chloride, and potassium (page 7 lines 12-22 and page 8 lines 1-2). Kuslys teaches that the protein can be hydrolyzed or non-hydrolyzed (page 3 lines 21-22). Kuslys teaches that the proteins are not hydrolyzed, and as hydrolysis is the process of breaking down a molecule, one of ordinary skill in the art would expect that the non hydrolyzed proteins as taught by Kuslys are intact as recited in claim 8. Refer specifically to page 3 lines 21-22. Kuslys teaches that the amount of vitamins and thus electrolytes varies depending on the infant population (page 7 lines 12-22).

Regarding the protein as intact, as Kuslys teaches of a similar infant formula to that as claimed in '805 and as Kuslys teaches that the protein is not hydrolyzed and is intact, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the protein to remain intact and not hydrolyzed as is known in the formula art as taught by Kuslys in order to use compositional ingredients that required less processing, thus saving time and money on equipment and manual labor.

To do so would have been obvious and common sense to one of ordinary skill in the art at the time the invention was made.

Regarding the formula as having a low amount of electrolytes as recited in claim 14, as discussed above the term is unclear, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an amount of nutrients and thus electrolytes depending on the feeding infant population as taught by Kuslys. To determine an appropriate amount of vitamins and/or minerals and thus electrolytes would have been obvious and routine determination to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 9 and 14 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6-13, 20 of copending Application No. 10/564,805 ('805) as amended March 2, 2009 further in view of Kratky et al (EP 01048226 A1).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of '805 encompass the instantly claimed invention as discussed above. The only difference is '805 does not claim the protein as partially hydrolyzed as recited in claim 9, or the formula as having a low amount of electrolytes as recited in claim 14.

Kratky teaches of an infant formula (abstract) comprising a source of lipids comprising fish oil (paragraph 0024), a source of carbohydrates (paragraph 0023), and a source of sweet whey protein from which the casino-glyco-macropeptide (CGMP) has been removed (paragraph 0017) wherein the protein is less than 2g/100kcal, including at about 1.8g/100kcal (paragraph 0028). Kratky teaches that the protein fraction can be hydrolyzed or partially hydrolysised, i.e. less hydrolyzed, in order to prevent allergic reactions in infants and make the protein easier to digest (paragraph 0018). Kratky teaches that the amount of vitamins and thus electrolytes varies depending on the infant population (paragraph 0030).

Regarding the protein as partially hydrolyzed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to at least partially hydrolyze the protein of the infant formula of '805 in order for the protein to be more allergenic friendly and easier to digest as taught by Kratky.

Regarding the formula as having a low amount of electrolytes as recited in claim 14, as discussed above the term is unclear, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an amount of nutrients and thus electrolytes depending on the feeding infant population as taught by Kratky. To determine an appropriate amount of vitamins and/or minerals and thus electrolytes would have been obvious and routine determination to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KELLY BEKKER whose telephone number is (571)272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kelly Bekker/
Examiner
Art Unit 1794